IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 18TH DECEMBER 2007 / 27TH AGRAHAYANA 1929

MFA.No. 1284 of 2000(B)

AGAINST MVOP.295/1995 OF THE MOTOR ACCIDENTS CLAIMS TRIBUNAL, OTTAPPALAM
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APPELLANT/PETITIONER:

VIJAYAN, S/O.CHINNAN,
KIZHAKKEPARAMBIL, KILLIMANGALAM,
CHELAKKARA, TRICHUR DISTRICT.

BY ADV. SRI.P.K.ASHOKAN
SRI.M.R.VENUGOPAL

RESPONDENTS/RESPONDENTS:
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1. M.T.ACHUTHA THARAVANAR,
S/O.SANKARA NARAYANAN NAMBOODHIRI,
'TEMPLE VIEW', CHERUTHURUTHI,
THRISSUR DISTRICT.

2. P.K.RADHA KRISHNAN, S/O.P.C.KITTUNNY,
PUTHENVEETTIL HOUSE, P.O.THEKKEPOTTA,
PUDUKODE, PALAKKAD DISTRICT.

3. THE NEW INDIA ASSURANCE COMPANY LTD.,
OTTAPALAM.

R3 BY ADV. SRI.S.MAMMU

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18.12.2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1284 of 2000

Dated this the 18th day of December, 2007.

JUDGMENT

Koshy, J:

Appellant-claimant suffered serious injuries while driving a tempo van when a bus driven by 2nd respondent hit the tempo van. The bus was insured by the 3rd respondent-Insurance Company. He claimed a total compensation of Rs. 4,50,000/-. Including reimbursement of actual medical expenses incurred, the total amount awarded was only Rs.1,09,800/-. The only dispute is regarding the quantum of compensation.

2. Admittedly, he was a professional tempo driver. Even if he was getting only Rs.80/- per day, for 25 days he may get Rs.2000/- as monthly income. The Tribunal has taken Rs.1500/- as the monthly income. He was 25 years old. Taking guidelines from Second Schedule, multiplier fixed is 17. With regard to the injuries, he had fracture of right fibula and fracture of neck femur (R) with involvement of acetabulam fracture and fracture

medial malleolous right side. C.T. Scan showed brain oedema. Ext.A10 is the discharge certificate issued from Al-Shifa Hospital. It shows the following injuries:

> "The injuries confirmed were multiple deep Lws over (R) forearm, central fracture dislocation (R) hip, Grade -II compound fracture patella (R), Fracture (R) medial malleolus, segmenteal fracture (R) fibula compound comminuted fracture medial tibial condyle (R) side."

Ext.A15 is the disability certificate wherein it is stated that there is shortening of right lower limp by 5 c.m. and it was stated that there was partial permanent disability of the lower limb function and disability was assessed at 45%. He has also undergone 5 surgeries. We are of the view that considering the medical records 15% whole body disability can be fixed. If that be so, compensation payable will Rs.61,200 (Rs.2000x12x15/100x17). The Tribunal has granted Rs.25,000/- towards disability compensation and Rs.12,500/- as injury compensation. The above amount has to be deducted. Therefore, additional amount payable for disability and loss of power is Rs.23,700/-. The Tribunal fond that he was unable to do any work because of the long period of treatment for six months and awarded Rs.9,000/-

for loss of actual earning during the period of treatment. Since, we have given an increase of Rs.500/- in the monthly income, he will be entitled to Rs.3000/- more in the loss of actual earning. Even though it is contended that the amount granted under heads are also very low, we are of the view that no enhancement is need considering the total amount awarded. The additional compensation of Rs.26700/- should be deposited by the 3rd respondent Insurance-Company with 7.5% interest from the date of application till its deposit over and above the decreed amount by the Tribunal. On deposit of the amount, the appellant is allowed to withdraw the same.

Appeal is partly allowed.

Sd/

J.B.KOSHY,
JUDGE.

Sd/-

K. HEMA,
JUDGE.

Krs.

J.B. KOSHY & K. HEMA, JJ.

M.F.A.No. 1284 of 2000

Dated this the 18th day of December, 2007.

JUDGMENT